



Memorandum

June 3, 2003

TO: Hon. Carolyn B. Maloney
Attention: Benjamin Chevat

FROM: Jon O. Shimabukuro
Legislative Attorney
American Law Division

SUBJECT: Workers' Compensation and Volunteers at the World Trade Center Site

This memorandum responds to your question concerning the availability of workers' compensation for volunteers who performed services at the World Trade Center site following the September 11, 2001 terrorist attacks. In particular, you asked about the possible extension of workers' compensation benefits to World Trade Center volunteers under the Department of Defense and Emergency Supplemental Appropriations For Recovery From and Response to Terrorist Attacks on the United States Act ("the Act").¹ Although the Act provided \$125,000,000 to the New York State Workers Compensation Review Board for the processing of claims related to the terrorist attacks, the general lack of coverage for volunteers under New York's workers' compensation statute suggests that the funds are probably not available to benefit volunteers.²

In general, volunteers are not entitled to workers' compensation because they are not deemed to be employees.³ N.Y. Workers' Comp. Law § 2 defines an "employee" to mean "a person engaged in one of the occupations enumerated in section three or who is in the service of an employer whose principal business is that of carrying on or conducting hazardous employment upon the premises or at the plant, or in the course of his employment

¹ Pub. L. No. 107-117, 115 Stat. 2230 (2002).

² The Department of Defense and Emergency Supplemental Appropriations For Recovery From and Response to Terrorist Attacks on the United States Act provided a total of \$175,000,000 for workers' compensation programs. \$125,000,000 was designated to the New York State Workers Compensation Review Board. An additional \$50,000,000 was designated to the New York State Uninsured Employers Fund.

³ Jack B. Hood et al., *Workers' Compensation and Employee Protection Laws* 48 (1999).

away from the plant of his employer . . .”⁴ Although the term “employee” is further defined to include some volunteers, it does not appear that these volunteers resemble the volunteers at the World Trade Center site. § 2 provides that the term “employee” shall also mean “civil defense volunteers who are personnel of volunteer agencies sponsored or authorized by a local office under regulations of the civil defense commission.”⁵ Civil defense volunteers include those members of the civil defense forces “under the provisions of the state defense emergency act who are volunteer persons serving without compensation in the personnel of volunteer agencies.”⁶ Civil defense services appear to involve “the defense of the people of [New York] . . . and the safeguarding of property against attack.”⁷

Under New York law, two other types of volunteers appear to be eligible for workers’ compensation. The Volunteer Ambulance Workers’ Benefit Law establishes a system of benefits for volunteer ambulance workers, and provides for the administration of such system by the Workers’ Compensation Board and its chairman.⁸ Volunteer ambulance workers who die from the effects of injury in the line of duty, and volunteer ambulance workers who are injured in the line of duty may receive benefits in accordance with the Volunteer Ambulance Workers’ Benefit Law. The Volunteer Firefighters’ Benefit Law establishes a similar compensation system for volunteer firefighters.⁹ Volunteer firefighters who die from injuries incurred in the line of duty, and those who are injured in the line of duty may receive benefits in accordance with that law.

Because volunteer ambulance workers and firefighters are entitled to workers’ compensation, and it seems likely that they provided services at the World Trade Center site, they probably received compensation. Funds provided under the Act were arguably used in the processing of their claims. However, because other volunteers do not appear to be eligible for workers compensation under New York law, it would seem that they did not benefit from the Act. Other recent federal legislation that provided funds for monitoring the health of emergency services personnel following the September 11 attacks does appear to apply to volunteers, but is limited to “baseline and follow-up screening and clinical examinations, long-term health monitoring and analysis.”¹⁰

Legislation that would provide workers’ compensation to World Trade Center volunteers has been introduced in the New York legislature. Senate Bill 4693, the Workers’ Compensation Act for World Trade Center Volunteer Rescue Workers, would recognize

⁴ N.Y. Workers’ Comp. Law § 3 identifies various occupations for which compensation is available for injuries or death incurred by employees.

⁵ N.Y. Workers’ Comp. Law § 2.

⁶ N.Y. Workers’ Comp. Law § 302.

⁷ N.Y. Workers’ Comp. Law § 301.

⁸ N.Y. Vol. Ambul. Workers’ Ben. Law § 1 *et seq.*

⁹ N.Y. Vol. Fire. Ben. Law § 1 *et seq.*

¹⁰ 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. No. 107-206, 116 Stat. 820, 871 (2002).

volunteer rescue workers "to be in the special employment of the city of New York."¹¹ Workers' compensation benefits would be provided for "disability or death proximately caused by injury, disease, or infection sustained or incurred in the course of such special employment without regard to fault as to cause of injury, disease, or infection."¹² S.B. 4693 defines a "World Trade Center volunteer rescue worker" to include "all persons who rendered service under the direction and control of an authorized rescue entity on or after the September eleventh, two thousand one, terrorist attack on the World Trade Center through and including September eighteenth, two thousand one, at or in the vicinity thereof, without remuneration or compensation."¹³

Funds made available under the Act would seem to be available to benefit volunteers if S.B. 4693 was passed. If World Trade Center volunteer rescue workers were entitled to workers' compensation, the processing of such workers' claims would probably be assisted by the \$125,000,000 provided by the Act.

¹¹ NY S.B. 4693, § 1 (2003).

¹² *Id.*

¹³ *Id.*